
STATUTORY INSTRUMENTS

2018 No. 86

The Wireless Telegraphy (Licence Award) Regulations 2018

PART 3

Qualification stage

CHAPTER 1

Qualification

Notification of names of applicants and associates

8.—(1) OFCOM shall give notice to each applicant of—

- (a) the name of each other applicant and the names of their associates; and
- (b) the deadline by which each applicant must notify OFCOM under paragraph (3).

(2) On receipt of that notice, each applicant must examine the names of the other applicants and their associates and determine whether any member of its applicant group is also an associate of another applicant or is also an applicant.

(3) Where an applicant determines that a member of its applicant group is also an associate of another applicant or is also an applicant, it must notify the other applicant and OFCOM of that fact by the deadline specified by OFCOM.

(4) If it appears to OFCOM from any application or notice under regulation 4(3) that a member of one applicant group is also a member of another applicant group, OFCOM shall give notice to each of the applicants concerned of that fact and specify a deadline by when each applicant concerned must notify OFCOM of any change in circumstances the effect of which is that no member of its applicant group is also a member of another applicant group.

Recording of applicant group members

9.—(1) Where there has been a change in the composition of an applicant's applicant group since the date of the application, that applicant must deliver to OFCOM revised versions of the documents provided under regulations 4(3)(a)(i) to 4(3)(a)(iii) which comply with those provisions following that change.

(2) OFCOM shall record the members of each applicant group, taking account of any changes notified under paragraph (1).

(3) Each applicant group so recorded shall constitute a bidder group.

Subsequent changes to bidder groups

10.—(1) An applicant or bidder may change its bidder group but, in relation to the award process, the applicant or bidder shall be subject to regulations 13(2), 112 and 115 if they apply to any such change.

(2) If a change involves the addition or departure of an associate, the applicant or bidder must notify OFCOM of the change and deliver to OFCOM a revised version of the documents provided under regulations 4(3)(a)(i) and 4(3)(a)(iii) which comply with those provisions following the change.

(3) If a change involves the addition of a person who is not an associate of the applicant or bidder to its bidder group, the applicant or bidder must deliver to OFCOM—

- (a) a document in the form set out in Schedule 3 completed by the applicant or bidder and signed on its behalf by two authorised persons and completed by and signed by or on behalf of the person in respect of whom that document is completed; and
- (b) a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

Changes to existing spectrum holdings

11. If an applicant or, in relation to an applicant, any person referred to in regulation 4(3)(a)(iii) changes its existing spectrum holdings before existing spectrum holdings are recorded under regulation 19, the applicant must notify OFCOM and deliver to OFCOM a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

Fitness to hold a licence

12.—(1) OFCOM shall, for each applicant which has submitted an application in accordance with regulation 4, determine whether that applicant is fit to hold a licence.

(2) In making their determination under paragraph (1), OFCOM shall take into account—

- (a) any direction given by the Secretary of State to OFCOM under section 5 of the Communications Act 2003(1);
- (b) whether the applicant is a fit and proper person to hold a licence having regard to the probity of—
 - (i) the applicant;
 - (ii) each other member of the applicant's bidder group; and
 - (iii) each director of each member of the applicant's bidder group;
- (c) whether any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
- (d) whether any member of the applicant's bidder group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process;
- (e) whether any member of the applicant's bidder group has acted or is acting in a way which is likely to distort the outcome of the award process;
- (f) whether any member of the applicant's bidder group, or any person to whom confidential information has been disclosed, has disclosed, or is disclosing or attempting to disclose or has incited or is inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—
 - (i) to OFCOM;
 - (ii) to a member of the applicant's bidder group;

(1) 2003 c.21.

- (iii) to a provider of finance for the purpose of raising finance for the applicant's application; or
- (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's bidder group;
- (g) whether any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
- (h) whether any member of the applicant's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process; and
- (i) whether any person who is a member or a director or an employee of a member of the applicant's bidder group and is also a director or an employee of a member of another bidder group is—
 - (i) taking part in the preparation of both bidder groups for participation in the award process; or
 - (ii) receiving confidential information relating to both bidder groups.
- (3) Applicants must, if requested to do so by OFCOM, provide by a deadline specified by OFCOM any information or documentation which OFCOM require to make their determination.
- (4) If an applicant does not provide such information or documentation by the deadline specified by OFCOM, OFCOM shall also take that fact into account in making their determination.
- (5) Where OFCOM determine that an applicant is not fit to hold a licence the applicant shall be disqualified from the award process.
- (6) OFCOM shall inform an applicant which is disqualified of their decision and the reasons for it but that applicant's initial deposit shall not be forfeited because of that decision.

Qualification to participate in the award process

- 13.—**(1) Each applicant—
- (a) which was not disqualified under regulation 12, and
 - (b) which has no member of its bidder group which is also a member of the bidder group of another applicant (which was not disqualified under regulation 12),
- shall be qualified to participate in the award process.
- (2) An applicant which has a member of its bidder group which is also a member of the bidder group of another applicant shall not be qualified to participate in the award process.
- (3) Where an applicant is not qualified to participate in the award process, OFCOM shall inform that applicant of that fact but that applicant's initial deposit shall not be forfeited for that reason.

Publication of names of qualified applicants

- 14.—**(1) OFCOM shall notify each applicant qualified to participate of—
- (a) the name of each other applicant who is so qualified;
 - (b) the names of their associates; and
 - (c) if the pre-existing licence holder applied and qualified to participate—
 - (i) whether it applied for a replacement licence; and
 - (ii) whether it will participate in the principal stage and the assignment stage, or only in the assignment stage.
- (2) OFCOM shall publish the names of all applicants who are so qualified on OFCOM's website.

Withdrawal of an application

15.—(1) OFCOM shall notify each applicant qualified to participate of the last day for withdrawal from the award process (“last day for withdrawal”) and shall publish the last day for withdrawal on OFCOM’s website.

(2) If, on or before the last day for withdrawal, OFCOM receives notice from an applicant that it wishes to withdraw its application, signed by two authorised persons, the application shall be withdrawn and the applicant shall be excluded from the award process but that applicant’s initial deposit shall not be forfeited for that reason.

(3) That applicant shall not be re-admitted to the award process.

(4) OFCOM shall notify all other applicants of the withdrawal.

Determination of number of bidders

16.—(1) After the last day for withdrawal, OFCOM shall determine the number of bidders.

(2) Where there are no bidders, OFCOM shall complete the award process by refunding to applicants which were not qualified, or withdrew in accordance with regulation 15, their initial deposit (where such deposit has not been forfeited) but not any interest which has accrued on the deposit.

(3) Where there are one or more bidders—

(a) OFCOM shall refund to applicants which were not qualified, or withdrew in accordance with regulation 15, their initial deposit (where such deposit has not been forfeited) but not any interest which has accrued on the deposit; and

(b) OFCOM shall grant licences in accordance with the procedure set out in these Regulations.

(4) OFCOM shall publish the names of the bidders on OFCOM’s website.

CHAPTER 2**Additional deposit and eligibility limit for the first principal stage round****Additional deposit before the first principal stage round**

17.—(1) A bidder which wishes to participate in the principal stage must pay, in addition to the initial deposit, a deposit of at least nine hundred thousand pounds (the “additional deposit”) which shall be taken into account by OFCOM in accordance with regulation 18 for the purpose of calculating the bidder’s eligibility limit for the first principal stage round.

(2) To pay the additional deposit, a bidder must, by a deadline specified by OFCOM, pay the additional deposit into OFCOM’s bank account with accompanying information which identifies the bidder.

(3) Where a bidder does not pay the additional deposit by the deadline, that bidder shall be excluded from the award process and shall not receive a refund of any sums which the bidder has paid as a deposit under these Regulations, which shall (where not already forfeited) be forfeited together with any interest which has accrued on the deposit.

(4) After the deadline specified under paragraph (2), OFCOM shall determine each bidder’s eligibility limit for the first principal stage round in accordance with regulation 18 and shall record each bidder’s existing spectrum holdings in accordance with regulation 19.

Determination of a bidder’s eligibility limit for the first principal stage round

18.—(1) A bidder’s eligibility limit shall be—

- (a) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is thirty million pounds or less, the number which is the amount of such deposit in pounds divided by one million;
 - (b) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is more than thirty million pounds but less than seventy million pounds, the number (E) which is calculated in accordance with the formula set out in paragraph (2); and
 - (c) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is seventy million pounds or more, forty-six.
- (2) The formula is $E = 30 + [(D - 30,000,000) / 2,500,000]$, where “ D ” is the amount of the deposit in pounds.
- (3) Where the number which results from the calculation in paragraphs (1)(a) or 1(b) is not a whole number, the bidder’s eligibility limit shall be that number rounded down to the nearest whole number.
- (4) That number shall be expressed as a number of points.

CHAPTER 3

Recording of existing spectrum holdings, determination of the 2.3 GHz bid limit and overall bid constraints

Recording of existing spectrum holdings

- 19.**—(1) After the deadline specified in regulation 17(2), OFCOM shall, for each bidder, record—
- (a) the bidder’s existing immediately useable spectrum holdings; and
 - (b) the bidder’s existing overall spectrum holdings.
- (2) A bidder’s existing immediately useable spectrum holdings to be recorded are those which have been notified by that bidder under regulation 4(3)(a)(iii), as amended to take account of any notifications of subsequent changes to those spectrum holdings which may have been made under regulations 9(1), 10(2), 10(3) or 11.
- (3) A bidder’s existing overall spectrum holdings to be recorded are those which have been notified by that bidder under regulation 4(3)(a)(iii), as amended to take account of any notifications of subsequent changes to those spectrum holdings which may have been made under regulations 9(1), 10(2), 10(3) or 11.
- (4) After the recording of spectrum holdings, the bidder and, in relation to the bidder, any person referred to in regulation 4(3)(a)(iii) may change its spectrum holdings but in relation to the award process—
- (a) the bidder shall be subject to regulations 112 and 115 if they apply to that change; and
 - (b) the bidder’s recorded spectrum holdings shall not be amended.
- (5) If there is such a change, the bidder concerned must notify OFCOM of the change and deliver to OFCOM a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

Determination of the 2.3 GHz bid limits

20. —

- (1) Before the first principal stage round, OFCOM shall—
- (a) determine the maximum number of principal stage bids for 2.3 GHz lots, if any, each bidder may make in any round (the “2.3 GHz bid limit”) in accordance with paragraph (2); and

- (b) notify each bidder of its 2.3 GHz bid limit.
- (2) The 2.3 GHz bid limit for a bidder shall be—
 - (a) zero bids for 2.3 GHz lots, where the total in MHz of that bidder's recorded immediately useable spectrum holdings is greater than 245 MHz;
 - (b) one bid for a 2.3 GHz lot, where the total in MHz of that bidder's recorded immediately useable spectrum holdings is greater than 235 MHz but less than or equal to 245 MHz;
 - (c) two bids for 2.3 GHz lots, where the total in MHz of that bidder's recorded immediately useable spectrum holdings is greater than 225 MHz but less than or equal to 235 MHz;
 - (d) three bids for 2.3 GHz lots, where the total in MHz of that bidder's recorded immediately useable spectrum holdings is greater than 215 MHz but less than or equal to 225 MHz; or
 - (e) four bids for 2.3 GHz lots, where the total in MHz of that bidder's recorded immediately useable spectrum holdings is equal to or less than 215 MHz.
- (3) A bidder's 2.3 GHz bid limit shall not change during the principal stage.
- (4) The 2.3 GHz bid limit may be different for each bidder.

Determination of overall bid constraints

- 21.**—(1) Before the first principal stage round OFCOM shall—
- (a) determine for each bidder; and
 - (b) notify to each bidder an overall bid constraint.
- (2) The overall bid constraint may be different for each bidder.
- (3) The overall bid constraint shall be expressed as a number of frequencies in MHz and shall be calculated in accordance with paragraphs (4) and (5).
- (4) The number referred to in paragraph (3) shall be calculated in accordance with the formula $340 \text{ MHz} - z$ rounded down to the nearest multiple of 5 MHz, where z is the total in MHz of the bidder's recorded overall spectrum holdings.
- (5) Where the number of MHz resulting from the calculation referred to in paragraph (4) is higher than 190 MHz, the number shall be 190 MHz and not that higher number.
- (6) A bidder's overall bid constraint shall not change during the principal stage.